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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

In re METROPOLITAN SECURITIES ) No. CV-04-025-FVS  
LITIGATION )

CLASS ACTION

THIS DOCUMENT RELATES TO:  
ALL ACTIONS

~~PROPOSED~~ ORDER  
PRELIMINARILY APPROVING  
SETTLEMENT BETWEEN THE  
CLASS AND DEFENDANT ROTH  
CAPITAL PARTNERS, LLC

1 Having considered the Motion and Memorandum of Plaintiffs, pursuant to  
2 Federal Rule of Civil Procedure 23, for an Order preliminarily approving the  
3 proposed settlement (the "Settlement") between the Class and defendant Roth  
4 Capital Partners, LLC ("Roth") in accordance with the terms and provisions of the  
5 Settlement Agreement dated January 29, 2010,

6 **IT IS HEREBY ORDERED:**

7 1. This Order incorporates by reference the definitions in the Settlement  
8 Agreement and the Judgment.

9 2. The Court has personal jurisdiction over all parties to the Action and the  
10 Roth Action, including all Class Members and Roth, and subject matter jurisdiction  
11 over the Action and the Roth Action.

12 3. Without further order of the Court, the Settling Parties may agree in  
13 writing to reasonable extensions of time to carry out any of the provisions of the  
14 Settlement Agreement.

15 4. In the interest of conserving expenses to the Class, pursuant to the terms  
16 of the Settlement Agreement, the Court shall defer approval of the form and manner  
17 of providing notice of the Settlement to the Class, and scheduling a hearing for final  
18 approval of the Settlement and Settlement Agreement (the "Final Approval  
19 Hearing").

20 5. The Court hereby preliminarily approves the Settlement, as embodied in  
21 the Settlement Agreement, as being fair, reasonable and adequate as to the Class  
22 Members, subject to further consideration at the Final Approval Hearing.

23 6. This Order shall become null and void, with the exception of the  
24 Bifurcation Order, and be without prejudice to the rights of the Settling Parties, all of  
25 whom shall be deemed to have reverted to their respective statuses in the Action and  
26 the Roth Action as of January 29, 2010, if: (i) the Effective Date does not occur; or  
27 (ii) the proposed Settlement is terminated or does not become effective for any other  
28 reason. In such event, the Settlement Agreement shall become null and void and

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1 have no further force and effect, and the Settlement shall be without prejudice and  
2 none of its terms shall be effective or enforceable.

3 7. The Action is stayed as to Roth in all respects until further order of the  
4 Court, except as may be necessary to implement and effectuate the Settlement and  
5 Settlement Agreement.

6 8. Pending determination by the Court as to whether the Settlement, as set  
7 forth in the Settlement Agreement, is fair, reasonable and adequate and should be  
8 finally approved and whether the Judgment dismissing the Action and the Roth  
9 Action with prejudice as to Roth and whether an order barring claims against the  
10 Roth Released Parties should be entered, no Lead Plaintiff nor any Class Member,  
11 either directly, representatively or in any other capacity, shall assert, commence or  
12 prosecute against any of the Roth Released Parties any of the Roth Released Claims  
13 in this Action or the Roth Action or any other proceeding or forum. This injunction  
14 is necessary to protect and effectuate the Settlement, this Order, and the Court's  
15 flexibility and authority to effectuate the Settlement and to enter judgment when  
16 appropriate, and is ordered in aid of the Court's jurisdiction and to protect its  
17 judgments pursuant to 28 U.S.C. Section 1651(a).

18 9. Pending determination by the Court as to whether the Settlement, as set  
19 forth in the Settlement Agreement, is fair, reasonable and adequate and should be  
20 finally approved and whether the Judgment dismissing the Action and the Roth  
21 Action with prejudice as to Roth and whether an order barring claims against the  
22 Roth Released Parties should be entered, no present or future defendant in the Action  
23 or in the Roth Action, either directly, representatively or in any other capacity, shall  
24 assert, commence or prosecute any claim against any of the Roth Released Parties,  
25 however styled, whether legal or equitable, known or unknown, whether arising  
26 under state law or federal non-securities law, whether for indemnification or  
27 contribution or otherwise denominated (including without limitation claims for  
28 breach of contract or misrepresentation), where the claim is based on, arises out of or

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1 relates to claims or allegations asserted in the Action or the Roth Action. This  
2 injunction is necessary to protect and effectuate the Settlement, this Order, and the  
3 Court's flexibility and authority to effectuate this Settlement and to enter judgment  
4 when appropriate, and is ordered in aid of the Court's jurisdiction and to protect its  
5 judgments pursuant to 28 U.S.C. Section 1651(a).

6 10. In the event the Action proceeds to trial as to a non-settling  
7 defendant(s): (i) the Class may not use any finding, ruling, order, trial testimony,  
8 verdict or judgment or any attribution of fault or responsibility to Roth, for any  
9 purpose whatsoever against Roth in the Action, the Roth Action or in any other  
10 proceeding or forum; (ii) any finding, ruling, order, trial testimony, verdict or  
11 judgment or any attribution of fault or responsibility to Roth, shall not be admissible  
12 for any purpose whatsoever as against Roth in the Action, the Roth Action or in any  
13 other proceeding or forum; (iii) any finding, ruling, order, trial testimony, verdict or  
14 judgment or any attribution of fault or responsibility to Roth, shall not constitute  
15 collateral estoppel or res judicata as to Roth in the Action, the Roth Action or in any  
16 other proceeding or forum; (iv) Roth shall not use any finding, ruling, order, trial  
17 testimony, verdict or judgment for any purpose whatsoever against the Class in the  
18 Action or the Roth Action or against the Class in any other proceeding or forum; (v)  
19 any finding, ruling, order, trial testimony, attribution of fault or responsibility to any  
20 other defendant, verdict or judgment shall not be admissible for any purpose against  
21 the Class in the Action or the Roth Action or against the Class in any other  
22 proceeding or forum in any litigation between Roth and the Class; and (vi) any  
23 finding, ruling, order, trial testimony, attribution of fault or responsibility to any  
24 other defendant, verdict or judgment shall not constitute collateral estoppel or res  
25 judicata as to the Class in the Action or the Roth Action or against the Class in any  
26 other proceeding or forum in any litigation between Roth and the Class. If the  
27 Settlement is terminated or fails to become effective for any reason, the Class shall  
28 not be estopped from asserting the liability of Roth in the Action, the Roth Action or

1 any other proceeding or forum as if no settlement had been negotiated or entered  
 2 into, and Roth shall not be estopped from challenging liability in the Action, the Roth  
 3 Action or any other proceeding or forum as if no settlement had been negotiated or  
 4 entered into.

5 11. This Order shall not be construed or used as an admission, concession or  
 6 declaration by or against Roth of any fault, wrongdoing, breach, or liability. Nor  
 7 shall the Order be construed or used as an admission, concession or declaration by or  
 8 against the Class Representatives or the Class, that their claims lack merit, that their  
 9 damages are in any way limited, or that the relief requested in the Action or the Roth  
 10 Action is inappropriate, or as a waiver by any party of any defenses of claims he, she,  
 11 or it may have.

12 12. The Class shall move the Court for an order approving and directing  
 13 notice of the Settlement to the Class, and setting a final approval hearing, no later  
 14 than the earlier of either (i) final resolution of the Class's claims against the non-  
 15 settling defendants in the Action, or (ii) June 15, 2010, or such continued date as the  
 16 Class and Roth may agree to in writing.

17  
 18 **IT IS SO ORDERED** this 12th day of February, 2010.

19 s/ Fred Van Sickle

20 UNITED STATES DISTRICT JUDGE

21 Presented by:

22 GORDON THOMAS HONEYWELL LLP

23  
 24 By: \_\_\_\_\_  
 25 Bradley B. Jones  
 Attorneys for Plaintiffs and the Class

26 HAGENS BERMAN SOBOL SHAPIRO LLP

27  
 28 By: \_\_\_\_\_

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